IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.854 OF 2003

Sitaram Babu Satve ...Appellant.

V/s

1. The State of Maharashtra
2. Laxmibai Maruti Dhasade ...Responents.

Shri Shrikant V. Gavand for the appellant.
Shri D.P. Adsule, APP for the State.

CORAM: V.M.KANADE,J.

DATE: 15th February 2005.

ORAL JUDGMENT:

1. Appellant is the original accused No.2 who is challenging the Judgment and order passed by the First Ad-hoc Additional Sessions Judge, Raigad in Sessions Case No. 131 of 2001 dated 17/6/2003. By the said judgment and order, the Trial Court was pleased to convict the present appellant for having committed an offence punishable under section 304 Part-II of the Indian Penal Code and sentenced him to suffer R.I. for seven years and to pay fine of Rs 5000 and, in default, to suffer further R.I. for two years.

2. Prosecution case in brief is that deceased Maruti and his wife Laxmibai were residing at village Bhandare along with his son Nathuram and his

daughter-in-law Rukmini and three grand-daughters and one grand-son. There was a dispute between the complainant and the accused regarding right of way between the land owned by the complainant and the land owned by the accused. According to the complainant, accused Babu had closed his road and, therefore, a complaint was filed by deceased Maruti at Goregaon Police Station. Prosecution case is that the accused were annoyed because of this complaint which was filed against them.

3. Prosecution case is that on 30/5/2001 Nathuram and his wife Rukmini and daughters had already gone to their land and deceased Maruti was following them and, at that time, accused No.1 to 4 assaulted the deceased as a result of which he fell down on the ground and shouted for help. His wife rushed to the spot and tried to rescue him. She was also assaulted by the accused. Both, deceased Maruti and Laxmibai fell down on the ground and became unconscious. Thereafter, they were brought to the house by their grand-daughters. A complaint was lodged at Mangaon Police Station and they were both taken to Mangaon Cottage Hospital. On instructions given by Dr. Mehta, the injured Maruti was taken to Bombay. However, on his way to Bombay Maruti died and his dead

body was taken to Pen Rural Hospital. In the post-mortem, it was found that there was fracture of the skull and there was corresponding injury to the brain of the deceased. The accused were arrested. Charge-sheet was filed. Prosecution relied on the evidence of P.W. 1 - Laxmibai, P.W. 2 - complainant Nathuram Maruti, P.W. 3 - Nathuram Babu, P.W.4 - Sitaram Ramchandra and also on the evidence of two doctors viz. P.W.5 - Dr Mehta and P.W.6 - Dr. Mundayat and also on the evidence of Investigating Officer P.W. 7 - A.P.I. Shelke. Prosecution also relied on the documentary evidence of spot panchanama, arrest panchanama, inquest panchanama, post-mortem notes and letter sent to the Chemical Analyser. The Trial Court, after appreciating the evidence on record, acquitted the accused No.1 and convicted accused Nos. 2, 3 and 4. Accused No.2 was found guilty of the offence punishable under section 304 Part-II of the Indian Penal Code and sentenced to suffer R.I. for seven years. Accused Nos. 3 and 4, however, were found guilty of the offence punishable under section 323 and they were released under the provisions of the Probation of Offenders Act and they were acquitted of the offence punishable under section

302 read with section 34 of the Indian Penal Code.

4. The learned Counsel appearing on behalf of the appellant has taken me through the judgment and order of the trial court as also evidence of the prosecution witnesses. The learned Counsel appearing for the appellant has submitted that the Trial Court erred in holding that the appellant was responsible for the death of the deceased. It is submitted that there was no legal evidence on record to come to the conclusion that accused No.2 assaulted the deceased on his head with stick. It is submitted that P.W.1 Laxmibai, wife of the deceased obviously had arrived at the spot after the incident and she had not witnessed the incident. It is submitted that the version given by P.W. 1 that she fell on the person of her husband and she was also assaulted by the four accused is not supported by any other alleged eye witnesses viz. P.W. 3 and P.W.4. It is submitted that her evidence is not corroborated by the medical evidence. It is submitted that she has stated that she received 20 strokes with stick. However, P.W.5, who examined P.W.1, has stated that she had received only two injuries viz. C.L.W. on forehead and contusion of right shoulder joint. He has further submitted that P.W. 1 had stated in her evidence that she had sustained bleeding injury and there was blood smeared on the ground. However, the spot panchanama

specifically mentions that no blood was found on the spot of the incident. It is submitted that this discrepancy creates doubt regarding the genuineness of the testimony of this witness. It is further submitted that there is discrepancy between the evidence of P.W.1, P.W. 2 and P.W. 3 and all these three witnesses have changed their version regarding incident which has taken place. The evidence of P.W. 4 also was not reliable as he has stated in his evidence that it was not possible for him to see the incident properly. It is, therefore, submitted that though this witness is alleged to be the eye witness, his testimony does not create any confidence.

5. The learned APP appearing on behalf of the State, however, has stated that all the eye witnesses have given true narration of the account and there is no reason to disbelieve the evidence of three eye witnesses. It is submitted that though there may be some minor discrepancies in their evidence, the presence of the accused and the motive for the assault and the actual assault has been established beyond the reasonable doubt.

6. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the

appellant. It is no doubt true that there are some discrepancies in the evidence of eye witnesses and to some extent, in her evidence P.W.1 - Laxmibai also has exaggerated the incident of assault. It is no doubt true that Laxmibai in her evidence has stated that she had received about 20 strokes on her back and head is not corroborated by the medical evidence. However, merely because there is some discrepancy in the statement of witnesses that would not be the justification to discard their entire testimony. P.W. 1 has stated in her evidence that she had seen the accused assaulting her husband with stick and that she was also assaulted by four accused persons. She has, thereafter, stated that her husband was taken to the house and, thereafter, he was taken to the hospital. This testimony of P.W.1 is corroborated by her son Nathuram - P.W.2 who has stated that P.W. 1 Laxmibai had informed him about the assault by the accused on deceased Maruti and his mother. P.W. 3 also in his evidence has stated that on the date of the incident, he saw that deceased Maruti was assaulted by accused No.2 on his neck with stick and that Maruti fell on the ground after he received second blow. P.W. 4 - Sitaram also has stated in his evidence that accused No.2 assaulted deceased Maruti on his head with stick and accused No.4 assaulted Laxmibai with stick. This

evidence given by the eye witnesses has been corroborated by the medical evidence. P.W. 5 in his evidence has stated that there was a fracture of the skull. He has stated that there were five injuries found on the body of the deceased Maruti out of which three were fracture injuries. P.W. 6 - Dr. Jhoti Raghavan also has stated that she had carried the post-mortem examination on the dead body of Maruti and she had noted fracture of right tempo parietal bone and the brain and surrounding tissues were also injured. Thus, in my view, this evidence clearly establishes that the accused No.2 had assaulted the deceased.

7. The finding recorded by the Trial Court, therefore, will have to be confirmed. The conviction of accused No.2 for the offence punishable under section 304 Part-II of the Indian Penal Code is confirmed.

8. However on the question of sentence, it can be seen that accused Nos. 3 and 4 have been released under the provisions of the Probation of Offenders Act. The accused was a young man whe the offence was committed. There are no criminal antecedents and the offence apparently was committed in a heat of passion.

The appellant was in custody for a period of three months during trial and for about 2 months after his conviction. His application for bail was rejected by this Court by order dated 11/08/2003. Since then he is in jail. Appellant has already undergone two and half years of sentence. Considering the peculiar facts and circumstances of the case, I am of the view that ends of justice would be met if the sentence is reduced from seven years to the one the appellant had already undergone in jail.

9. In the result, the following order is passed:-

O R D E R

1. Appeal is partly allowed. The conviction of the appellant-accused is confirmed. Sentence is however, reduced from 7 years to the period already undergone in jail. Appellant, however, shall pay fine of Rs 20,000/- and in default of payment of fine, appellant - accused to undergo 6 months R.I. Out of fine of Rs 20,000/- if deposited by the appellant, an amount of Rs 19,000/- shall be paid to Laxmibai Maruti Dhasade who is residing at village Bhandare, Taluka Mangaon,

District Raigad.

2. The appellant be released forthwith if not required in any other case. Appellant to pay fine within a period of 6 months. In the event the appellant does not pay the fine within 6 months, he shall complete remaining sentence of 6 months in default of payment of fine.

V.M. KANADE, J.